

# Cayman Trusts: An Overview

A trust is a legal relationship created when a person (the settlor) places assets under the control of another person (the trustee) for the benefit of beneficiaries or a specific purpose. The trustee is obliged to deal with those assets, not for his own benefit, but for the benefit of the beneficiaries or to further the specific purpose set out in the trust deed.

The Cayman Islands is a well-respected and sophisticated jurisdiction for the establishment of trust. The general principles of Cayman Trust law are derived from those of English trust law and they have been supplemented by statute to offer a variety of flexible and user-friendly trust structuring options.

## Common types of trust

Cayman Trusts may be discretionary or fixed interest in nature. This means that the trust assets can either be held for a class of beneficiaries with distributions being made at the discretion of the trustee (discretionary trusts) or alternatively the trust deed can set out the specific beneficial interests of each beneficiary, such as a right to the income earned by the trust assets (fixed interest trusts).

Additionally, Cayman trusts can be established for charitable purposes or non-charitable purposes (the latter most commonly in the form of STAR trusts – for more information see separate guide on STAR trusts).

## Perpetuity periods

In general, Cayman trusts cannot exist for more than a maximum of 150 years, unless they are charitable trusts or STAR trusts, which may exist indefinitely.

## Exempted trusts

A Cayman Trust may become an exempted trust if desired. The advantage of exempted trust status is that the trust will receive a tax free guarantee from the Cayman government for up to 50 years (confirming that the trust assets will not be subject to Cayman tax in that period).

The exempted trust is registered with the Registrar of Trusts and the trust deed entered in the registry, which is not open to the public inspection. A registration fee and annual fees are payable for a trust to be an exempted trusts.

## Reserved powers

For a number of reasons, the settlor may wish to retain a level of control over specific elements of the running of the trust for himself or another, commonly the protector (if one is appointed). As a result, certain powers which are usually vested in the trustee may instead be conferred on the settlor or protector or may only be exercisable by the trustee with the prior consent of the settlor or protector. Such provisions would be included in the trust deed if required.

Cayman statutory law has created a presumption that the settlor of a trust intended to create the trust with immediate effect and that presumption will not be rebutted, nor the validity of the trust affected, if specific powers are reserved to the settlor.

These include:

- Power to revoke, vary or amend the trust
- Power to appoint income or capital

- Any limited beneficial interest in the trust property
- Power to act as a director or officer of any company owned by the trust
- Power to give binding directions to the trustee in connection with the investment of trust property
- Power to appoint, add or remove any trustee, protector or beneficiary
- Power to change the trust's governing law or forum for administration
- Power to require the trustee to obtain the consent of the settlor or another before exercising any power

## Private Trusts companies

Since a change to the law in 2008, it has been possible to establish a Private Trust Company (PTC) without the need to obtain a trust licence in Cayman. This exemption is on the condition that the PTC only carries out "connected trust business", is registered with the Cayman Islands Monetary Authority and its registered office must be provided by the holder of a Cayman trust licence. An initial registration fee and annual fees are payable for this exemption.

"Connected trust business" requires that all the settlors and contributors to the trusts of which the PTC is to be trustee must be connected (which is a statutory definition which covers relationships by blood and marriage between individuals and various relationships between companies). Unlike other offshore jurisdictions, there is no requirement that the beneficiaries are connected.

A PTC can be trustee of any type of Cayman trust, including STAR trusts, and may appeal to high-net worth clients who do not wish to engage the services of a corporate trustee and instead incorporate a PTC to be trustee of any trusts which they establish.

## Practical uses of Cayman trusts

Cayman trusts may be created for a number of reasons, including:

- As an instrument for succession planning in the event of death or incapacity
- To mitigate against tax liabilities
- To protect assets (eg from exchange controls or other government interference)
- As a confidential way of holding assets
- To protect beneficiaries who have difficulty in managing their own affairs
- To circumvent forced heirship rules
- To hold shares in a family company or in corporate transactions
- As a vehicle for philanthropic giving

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